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IN THE

Supreme Court of the United States

October Term, 1982

No. 82-794

MILDRED PETERS, et. al.,
Petitioners,

v.

WAYNE STATE UNIVERSITY,
TEACHERS INSURANCE AND ANNUITY ASSOCIATION
AND COLLEGE RETIREMENT EQUITIES FUND,
Respondents.

MEMORANDUM OF RESPONDENT WAYNE STATE UNIVERSITY SUPPORTING CERTIORARI

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Respondent Wayne State University believes that certiorari should be granted in this case. There is a clear conflict between the decision of the Second Circuit in *Spirt* v. *TIAA-CREF*, Nos. 79-7715, 79-7737 and 79-7739 (2d Cir. Sept. 29, 1982) and the decision of the Sixth Circuit in this case. But all TIAA-CREF participants — 550,000 employees, 3,100 educational institutions and 65,000 retirees, at the time of the District

Court's decision in this case — are in the same system, which requires one rule of law by which to operate. The conflict between the circuits therefore requires resolution.

This conflict cannot reasonably be resolved by the Court's impending decision in *Norris* v. *Arizona Governing Committee*, 671 F.2d 330 (9th Cir. 1982), petition for cert. granted, No. 82-52 (Oct. 12, 1982). The *Norris* facts and the *Norris* issues are significantly different from the TIAA-CREF facts and issues. If the court were to decide *Norris* alone, on its facts and issues, and then direct the Second and Sixth Circuits to reconsider *Spirt* and *Peters* in light of its decision in *Norris*, there is no reason to believe that the two circuits would come to the same resolution.

A crucial question as to which the Second and Sixth Circuits have divided is the question of whether or not TIAA-CREF is an "employer" for purposes of Title VII of the Civil Rights Act of 1964. A decision on *Norris* facts and issues cannot resolve that question.

A second crucial question as to which resolution is necessary is whether the McCarran-Ferguson Act immunizes TIAA or CREF from liability under Title VII. A decision on *Norris* facts and issues cannot resolve that question.

The higher education community has been litigating these questions since at least 1975. Each year the litigation continues TIAA-CREF is being compelled to spend on litigation hundreds of thousands of dollars which should go into pensions. Plaintiffs are being compelled to finance litigation against themselves out of their own pension money. Participants in the system who are not parties to the litigation are compelled to finance it out of their pension money. Universities like Wayne State University have dealt with the underlying substantive problem of inequitable lower benefits to retirees who are female by paying extra premiums to TIAA-CREF for females, so that they may receive equal payments. Until the Court re-

solves the matter, such Universities are at risk of "reverse discrimination" litigation by male employee plaintiffs. The opportunity for closure should be taken; the petition for certiorari should be granted.

Respectfully submitted,

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